

Agan Consulting, Inc.

Vocational Rehabilitation and Forensic Rehabilitation

Mandatory Participation in Vocational Rehabilitation Services Pre-Maximum Medical Improvement

Background: Based on 2012 data 37% of claims costs are for indemnity, this converts to \$41,802,848 in expenditures for the State Fund. When combining State Fund expenditures with private and self-insured carriers' indemnity costs were around \$87 million annually.

The trend from 2008 to 2012 reflect an increase in Temporary Total Disability (TTD) benefits from 42% to 68% of indemnity costs for claims. Concurrently, over the same timeframe there was a slight decrease in expenditures for Vocational Rehabilitation Benefits.

Assumptions: There are a certain percentage of claims where, on a more probable than not basis, it can be projected early on that the Injured Employee (IE) will:

Not be able to return to work (RTW) at their time of injury job.

Not be able to RTW in related occupations.

Will be on TTD for extended time-frame.

Does not have skills to RTW in anything but low paying jobs with significant wage loss.

Does not have skills/physical ability to RTW at all i.e. Permanent Total Disability (PTD)

In the above scenarios there are a certain percentage of cases where:

Injured Employee could benefit from Vocational Rehabilitation Services pre-MMI.

Pro-active pre-MMI Vocational Rehabilitation Services need to focus on "work-based learning". These services need to provide work-based technical skill training opportunities by utilizing a broad spectrum of community-based resources and learning opportunities. These Vocational Rehabilitation Services need to be creative and represent a shift in our thinking about community-based reintegration into the labor force. Currently, there are a number of model programs on a national basis to reintegrate long-term unemployed individuals into the workforce. These programs would be of some benefit in designing new approaches to our own Vocational Rehabilitation Services within the state of Montana.

Facts:

The longer a person is on indemnity benefits, i.e. TTD or PTD the less likely they are to return to work.

Currently, participation in Vocational Rehabilitation Services pre-MMI is non-mandatory. Therefore, Injured Employees are not required to prepare for return to work until they reach MMI. In some instance by the time Injured Employee's reach MMI the probability of return to work is diminished. Waiting until MMI to prepare for return to work is not normal in the general population; however, it has become the norm within the current workers compensation system.

Conclusions: Systems become ineffective when people feel powerless. In the current system several parties express a sense of powerlessness, resulting in adverse impact on system effectiveness and ultimate outcomes. Basic shifts in our way of thinking and some fundamental changes in the rules will result in the empowerment of primary system participants as follows:

Injured Employees will be empowered by having more control over their own destiny. By gaining control over their own destiny they will regain hope and with hope comes motivation, opportunities, and success. On the other hand, Injured Employees who may be malingering or seeking secondary gain may be negatively impacted if they decline participation in pre-MMI Vocational Rehabilitation Services assuming that they meet specified criteria to do so.

Employers will be empowered by the knowledge that they are not paying Injured Employees to be on Temporary Total Disability Benefits for extended periods of time, essentially while they are not being required to prepare for re-entry into the labor force. Employers repeatedly express frustration regarding this very issue. While employers have a responsibility under the current system to pay out benefits which negatively impact their rates they do not see Injured Employees share any responsibility in mitigating these factors.

Employers will also be empowered to impact the system in a pro-active/positive manner by participating (with the assistance of Vocational Rehabilitation Providers) in the development of work-based learning centers. This will empower employers to become a part of the solution not only in terms of pre-MMI vocational rehabilitation services but more generally in community-based grass root programs to facilitate return to work programs.

Insurers and Claims Examiner's will be empowered by having more tools to utilize in accomplishing return to work goals for Injured Employees while at the same time controlling indemnity costs, 703 benefits, and potentially lowering the rate of Permanent Total Disability claim settlements.

Currently, Insurers and Claims Examiners do not have the option of mandating that Injured Employees take active steps toward preparing themselves for return to work until they reach Maximum Medical Improvement, other than through medical treatment and therapies.

Vocational Rehabilitation Counselors will be empowered by being able to provide professional services that are more "reality-based". The current system has shifted away from the norm to the extent that in some cases Injured Employees simply wait it out on TTD Benefits until they reach MMI at which time they receive 703 benefits and/or begin participation in Vocational Rehabilitation Services. Vocational Rehabilitation Counselors will have the opportunity to provide a real impact on claim outcomes in cost mitigation; if, Injured Employees who meet specified criteria are mandated to participate in services. It is a well-known fact that the earlier that these services are provided the more effective the outcome will be.

Currently, there is a well-placed emphasis on Stay at Work/Early Return to Work efforts which appropriately addresses claims at an early stage. Beyond this early intervention focus there is a gap in services until Injured Employees reach MMI. For those who do not stay at work or return to work with the employer of injury the "life of their claim" can result in extended TTD benefits while qualified Claims Examiners and Vocational Rehabilitation Counselors have little legal leverage to mitigate claim outcomes.

Actions for Change: In a certain percentage of cases pre-MMI mandatory participation in Vocational Rehabilitation Services provides opportunities, while extended Temporary Total Disability Benefits result in "opportunity costs". Clearly, this basic shift in our thinking, (i.e. implementing case specific pre-MMI mandatory participation in Vocational Rehabilitation Services) is worthy of consideration for further research and potential legislative change. This single change in legislation provides a unique opportunity to provide more effective outcomes while concurrently lowering indemnity costs of workers compensation claims.

Empowerment = opportunity = hope = motivation = success.

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